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## Courthouse News & Cases

### Brooklyn Judiciary To Receive Long-Overdue Pay Raise?

by Samuel Newhouse (sam@brooklyneagle.net), published online 01-11-2010

#### High Court Hears Oral Arguments Tuesday on State Judges' Salaries

By Samuel Newhouse  
Brooklyn Daily Eagle

ALBANY — The judiciary's legal fight for their first pay raise in 10 years is reaching the final showdown. The judges of the Court of Appeals (sans the Chief Judge due to conflict) are scheduled to hear oral arguments Tuesday for three separate lawsuits filed by state court judges to compel the New York state legislature to increase their salaries.

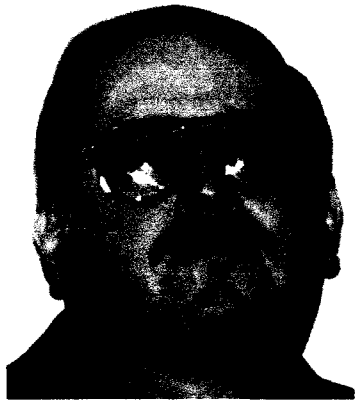
The state has been reluctant to grant the judiciary's request for a cost-of-living increase during the recession as budgets are slashed statewide. But judges, whose salaries have not changed since 1999, almost universally agree that the issue can't wait any longer.

Now it remains to be seen whether their claims are valid — or if an order from one branch of the government to another, telling it to give it more money, would be obeyed.

Trial judges are plaintiffs in two petitions, Larabee v. Governor and Maron v. Silver. Brooklyn Supreme Court Justice Arthur M. Schack is a plaintiff in Maron.

The third lawsuit, which was filed by <<first <previous next> last>> former New York state Chief Judge Judith S. Kaye, began as Kaye v. Silver but is now Chief Judge v. Governor, with Chief Judge Jonathan Lippman replacing Kaye as the lead plaintiff. Hence the conflict, and why Lippman must recuse himself Tuesday.

Court of Appeals spokesman Gary Spencer confirmed Monday that oral arguments for all three lawsuits will be heard in a row, and that a consolidated decision is expected, and it will likely be released in mid-to-late February.



"The key is the separation of powers argument ... It would be very nice if we could settle, and the legislature would see the light."

—Hon. Arthur M. Schack

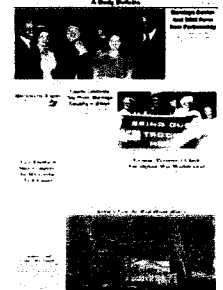
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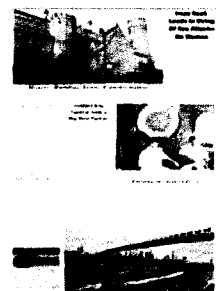
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Justice Schack, reached for comment Monday, declined to predict an outcome.

"I'm not going to speculate," he said. "I'm anxious to see what happens like everybody else."

Maron v. Silver lost in the Appellate Division, Third Department in Albany, in a decision that said a discriminatory act breaching the separation of powers had not been proven. But that same "linkage" argument has so far been victorious for the other two lawsuits.

"The separation of powers argument is the key," Schack said.

The first victory in this fight was in June 2008, when Manhattan Supreme Court Justice Edward Lehner ruled in favor of four trial judges in Larabee v. Governor. He ordered the legislature to increase salaries for the state's approximate 1,300 judges within 90 days.

The increase hasn't happened yet, but the decision was upheld by the Appellate Division, First Department in Manhattan.

Kaye's lawsuit made a similar argument, and it also won before Justice Lehner and was upheld in the Appellate Division, First Department.

Former Court of Appeals Judge George Bundy Smith, now a partner with Chadbourne & Parke LLP, is on the legal team that's handling Larabee.

"As far as a remedy is concerned, we're essentially seeking an order from the court that the [state] Comptroller decide how much money is owed to our clients — and that would apply to judges across the state," Smith explained.

As is well-known and widely bemoaned, Supreme Court judges make \$136,700 a year, less than some first-year associates at white-shoe law firms.

Presidents of state colleges, federal judges, summer associates at law firms who have not even passed the bar, various state employees — the list goes on and on. All of them have higher salaries than New York state judges.

Some judges have left the bench due to economic hardship, and as Smith pointed out, the salary makes it difficult for judges to pay for their children's education, whether public or private.

Even if Supreme Court judges' salaries were updated per cost-of-living increases to \$179,000, it would still be lower than the salary of the five New York City district attorneys, who are paid \$190,000, according to Smith.

"Judges have fallen way, way back," Smith said.

To some, the situation has become one of seeming prejudice against judges, as virtually every other type of state employee has had raises — and that's a large basis for the argument that the legislature violated the separation of powers and is acting discriminatorily by denying judges their raise.

"It really goes back to the Federalist Papers, when Alexander Hamilton said you can't have two branches of government team up against one, because that would certainly lead to tyranny," Smith said Many judges wish that the legislature would give them their raise of its own volition.

"It would be very nice if we could settle, and the legislature would see the light," Schack said.

But without any appearance of movement on the part of the legislature, judges have turned to what they know best — the law.

As former Chief Judge Kaye told the Eagle and other reporters during a press conference in 2007 as she was considering filing her salary lawsuit, Lady Justice holds two items in her hands: the scales of justice, and a sword.

"I and most lawyers would try to avoid a confrontation with other branches of government," Smith said. "It's best to avoid that. But if it has to be, it has to be."

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